

GOLDEN GATE UNIVERSITY

School of Law

San Francisco, April 12, 2013

**THE 23rd ANNUAL FULBRIGHT SYMPOSIUM
CONFERENCE REPORT ON
CONTROVERSIAL ISSUES OF CONTEMPORARY
INTERNATIONAL LAW IN A MULTIPOLAR WORLD**

By

CHRISTIAN NWACHUKWU OKEKE

Professor of Law, Director of LL.M. & S.J.D. International Legal Studies
Programs, Director of the Sompong Sucharitkul Center for Advanced
International Legal Studies, Golden Gate University School of Law

THE 23rd ANNUAL FULBRIGHT SYMPOSIUM CONFERENCE REPORT ON CONTROVERSIAL ISSUES OF CONTEMPORARY INTERNATIONAL LAW IN A MULTIPOLAR WORLD

By Christian N. Okeke

Conference Report

Controversial issues of contemporary international law in a multipolar world attempt to discuss and analyze briefly, in their relative degrees of importance, some issues and changes that have affected and continue to affect international law and its progressive development. The structure of international law can no longer be reasonably or adequately defined or described strictly in the traditional manner delimiting only the jurisdiction of States. As we predicted elsewhere over four decades ago, it is now a fact that contemporary international law regulates in varying degrees the relationship of many other subjects of international law between themselves and their relations with States.¹ It is true that the nature and development of international law has continued to be mired in controversy.

The question whether international law is law is now overburdened. In our minds, it is a trivial dispute about the meaning of words rather than about the nature of things. This thinking is so because the facts which set international law apart from municipal law are clear and well known. The only question to be settled is whether we should observe the existing convention or ignore it which is for each State or person to settle for him or herself.

Our report is concerned with highlighting selected recent developments and actions by some States, or groups of States, as well as other actors, which have continued to thrust more challenges on the progressive development of contemporary international law. Certain behaviors on issues raise serious questions as to whether there are possible deliberate attempts by some powers to re-write international law completely? Is international law still a legal system that is intended to regulate the actions of all States and other subjects of the law, irrespective of their differences in size and capability? Or, are States unilaterally re-designing international law to suit their individual purposes?

¹ Chris N. Okeke, *The Proliferation of New Subjects of Contemporary International Law Through Their Treaty-Making Capacities*, Rotterdam University Press, 1973.

International law has experienced profound transformations in the course of the last two centuries. Among such transformations, none has been more significant or far-reaching than the fact that international law has changed from the law of a family of nations based on Western Christendom into the law of a universal world community.² This community has fundamentally changed the composition and distribution of influence which makes it even more necessary to have a legal system with sufficiently broad and deep foundations that are effective enough to commend the allegiance of the community.³

To the best of our knowledge, there is lack of basis in international law whereby the Head of State of a sovereign country, or a group of Heads of States of countries, can legitimately question and condemn the Head of State of another sovereign country as illegitimate. More troubling is to blatantly order and proceed to not only support but facilitate a regime change in a Third sovereign State. We consider it appropriate to briefly re-examine the concept of sovereignty, which continues to be the cornerstone of international law.

1. Re-assessing the Concept of Sovereignty in International Law

The notion of sovereignty and its continued viability as a principle of international law cuts across many, if not all, the activities of States and other subjects of international law. The issue of the status of sovereignty as a concept in modern international law is the most controversial problem of international law in a multipolar world. It forms a starting point in the examination of other relevant important matters examined in the conference report. If sovereignty is still a viable principle, which we submit it should be, for how long, and in what form should it continue to exist?

The General Doctrine of Sovereignty

Sovereignty constitutes the fundamental basis upon which the whole structure of international law is built and stands at the present time. The problem of sovereignty of States occurs in all fields of international law. Sovereignty is often considered to be the

² C.N. Okeke, *Controversial Subjects of Contemporary International Law*, Rotterdam University Press, 1974.

³ *Id.*

essence of the State, at least from the point of view of law. It is interwoven with the problem of the sovereign equality of states, since there is no organic bond between sovereignty and equality in the practice of international law.

The international community exists as one in which all the sovereign states are legal persons on the basis of the principle of sovereign equality. The nature of this community does not allow the occupation of a superior position juridically by any one State so as to regulate and dictate all international relationships. Dominance, if it exists, is *the de facto* not *de jure*; and even so, no state today could afford to do so successfully without cooperation with other States.

Thomas Hobbes in his famous work 'Leviathan' held the view that sovereignty was an essential principle of order. He believed that men need for their security, a common power to keep them in awe and to direct their actions to the common benefit.⁴ For him the person or body in whom this power resides, however it may be acquired, is the sovereign. In his view, law neither makes the sovereign nor limits its authority. It is might that makes the sovereign. Law is merely what he commands. Moreover, since the power that is the strongest clearly cannot be limited by anything outside itself, it follows that sovereignty must be absolute and illimitable.⁵ In our opinion, his view about sovereignty as he characterized it by identifying sovereignty with might instead of legal right as to remove it from the sphere of jurisprudence where it now properly belongs and transfer it to that of politics, where it can only be a source of error is a position that would in modern times be rated as totalitarianism pure and simple.

From the history of the existence of States, one can see that the bearers of sovereignty (kings, governments) etc. have shown this awareness of being within the State by exercising supreme power over its territory and its inhabitants. This power is independent of any other state.⁶ Belief in the absolute sovereignty was pronounced amongst the rulers of the

⁴ Hobbes, Thomas. *Leviathan*, Chapter XX, London 1651.

⁵ Id.

⁶ There are two concepts which are often used alternatively in relation to sovereignty, namely *independence* and *self-determination*. Although the two are related somehow, they should be kept separate in

16th and 17th centuries. Writers of that time favored the view that sovereigns had absolute power inside a State, and absolute freedom of conduct in their relationships with one another.

A doctrine of sovereignty which has obtained greater currency is the so called Vattel⁷ doctrine. This doctrine maintains that international law is the body of rules governing the intercourse of independent States and that sovereignty means the supreme power of the State inside its territory and its independence from any external authority. Sometimes this is called the classical or traditional doctrine of international law. Georg Wilhelm Hegel (1870-1831) may be considered to be a great philosopher who contributed in the highest degree to the German doctrine of sovereignty. He thought absolute power in the world is incorporated in the State, a sovereign entity, which is independent of all other states. The law of nations is real law only if it emanates from treaties as an expression of the will of the State. This view of course cancels itself out as it means that a State is bound by a treaty which it concluded with another State only for a period of time depending on the will of the State. Power is for Hegel a symbol of law. The States are always free to have the recourse of war since war is the highest manifestation of sovereignty.⁸

Presently, there are two major contending perceptions of the concept of sovereignty. One perception is that of the United States while the other is European, represented mainly by the French approach. The United States' view of sovereignty while holding on to the Westphalia perspective, insists on a firm belief in the country's right to exceptionalism.⁹ By maintaining this position the United States assumes that its sovereignty is not and cannot be subordinate to any international law norm to which it does not explicitly adhere.¹⁰ Thus, international law is relegated to an inferior or secondary status that justifies the reasons for America's non-ratification of important multinational treaties like the Convention on the

jurisprudential discussion.

⁷ In terms of time, Vattel's doctrines came earlier than Hegel's.

⁸ Roscoe Pound, *Interpretations of Legal History*, Cambridge, Mass., 1946; about Hegel, p. 47.

⁹ Sophie Clavier, *Contrasting Franco-American Perspectives on Sovereignty*, Annual Survey of International and Comparative Law, Volume XIV, Spring 2008.

¹⁰ *Id.*

Rights of the Child, the Kyoto Protocol, or the Rome Statute establishing the International Criminal Court. It also legitimizes the breaching of international law and the use of unilateral military action, including drone strikes the legality of which will be further briefly discussed in the report. All of these actions follow national policies based on sovereignty in an effort to defend it from the threat of international law.¹¹

By contrast, the Europeans seem to be moving away from the traditional view of sovereignty and replacing it with ideas or notions of pooled sovereignty. Sovereignty is pooled because in many instances States' legal authority over internal and external matters are transferred to the community as a whole, authorizing action through procedures not involving State vetoes.¹² Unlike the United States, the French have adopted a monist approach to international law instead of the increasingly dualistic approach of the United States.

Qualified Sovereignty

We have traditionally used the notions *independence* and *sovereignty* without attempting to differentiate them; but it now seems desirable to do so by way of concluding this section. Independence and sovereignty can be seen as external and internal aspects of the State. Understandably, independence is the external and international characteristic of a fully sovereign State. It describes legally the right of the State generally to conduct its own affairs without direction, control or interference by any other authority.

Independence may be attained by any of three processes. The first is the transfer of sovereign power by the metropolitan power to a dependent territory. Examples of this are the separation of Iceland from Denmark in 1928 and that of Brazil from Portugal in 1825. The second process, where the dependent territory is not part of the metropolitan territory, is by unilateral declaration of independence, an example of which was the case of Rhodesia, now Namibia. The third process, where the territory is not 'dependent' but part of the same

¹¹ Id.

¹² Robert O Keohane, *Ironies of Sovereignty: The European Union and the United States, in Integration, in AN EXPANDING EUROPEAN UNION: REASSESSING THE FUNDAMENTALS* (Ian BEGG, John Peterson & JHH Weiler, Eds., Blackwell Publishing 2003).

entity, is by an act of secession as was the case when Norway seceded from Sweden in 1905, Biafra from Nigeria (1967-1970), Eritrea from Ethiopia, or Bangladesh from Pakistan (1970).

Within the framework of international law, a State may by voluntary action impose or accept limits upon its exercise of sovereignty, though it will be difficult to determine how far such a limitation can be accepted without appearing to have lost its independence. The Permanent Court of International Justice (PCIJ) has addressed this problem on more than one occasion. In the Wimbledon Case,¹³ the court distinguished restrictions upon sovereignty from its abandonment – i.e., loss of independence.¹⁴

Now, it has become only too clear that sovereignty is an essential and indispensable concept of internal political order. Absolute sovereignty no longer serves the purpose of international relations. Those who derive the concept of subjects of international law mainly from sovereignty seem to have adopted a correct starting point, which can be used to some advantage. That advantage is guided by examining the question of other subjects of international law, so long as it is borne in mind that the extreme view of the absolute sovereignty of states as the only subjects of international law would not correspond with the admitted fact that other subjects do exist.

International law must serve a social purpose and advance the important goals of peace, equality, and freedom; it is not simply a set of principles directed towards ensuring the minimal order necessary for the co-existence of states.¹⁵ Our discussion of the doctrine of sovereignty, which undoubtedly forms the basis on which modern international law lies, has made it too evident that this element as it is presently understood and applied amongst the

¹³ In the case of Wimbledon in 1923, the PCIJ had to decide the question whether the right of passage through the Kiel Canal was an improper limitation upon the exercise by Germany of sovereignty over its territory. Article 380 of the Treaty of Versailles provided that there should be a right of free passage for all vessels through the Kiel Canal in peace and in war. The Wimbledon was a vessel carrying arms to Polish forces engaged in fighting the Russians. Germany argued that to require her to let the vessel pass through the Kiel Canal was to compromise her right as an independent and sovereign state to observe neutrality in face of the hostilities then in progress. The Court rejected this argument in the light of the clear provisions of Article 380 of the Treaty of Versailles which was a treaty of obligation accepted by Germany.

¹⁴ Id.

¹⁵ Anthony Anghie, C.G. Weeramantry at the International Court of Justice, *Leiden Journal of International Law*, Volume 14, Number 4, 2001.

actors in international law is not absolute. Yet, the importance of the concept of sovereignty in international law is not in doubt. A contemporary position on the theory of sovereignty which strongly contests the correctness of reposing absolute power in any specific State, person, or body to us satisfies the modern needs of international life. Sovereignty is an important status by which a state vindicates its existence as a member of the international system. In the contemporary setting of international relations, the only way States can realize and assert their sovereignty is through active participation in the various international bodies that regulate and order the international system. All States should take seriously the building of a more modern, strong and sustainable international legal framework which they must respect as a matter of legal obligation and on the basis of the universal principle of sovereign equality of States, if international law is to be saved from destruction.

2. The Legality of Drone Strikes under International Law

There has been a heated controversy surrounding the very worrisome increase in drone strikes by certain States in recent times that call for a critical examination of the legality of such practice under international law. One of the universally accepted and fundamental principles of international law, which is based on sovereignty, relates to the question of non-interference or intervention in the internal affairs of other States. Ideally, democracies do not wage war on each other. All the attempts so far at collective security have focused on the avoidance of international armed conflict. Regrettably, very limited concern has been shown for the internal conditions within States, which are a major cause of wars. According to Professor James Crawford, “all states may claim to be ‘peace-loving’ that does not help if they do not agree as to which peace it is that they love. Any form of collective security has to have at least a basis on what it is that is to be secured: what counts as aggression, what as self defense?”¹⁶

¹⁶ James Crawford, *Democracy in International Law*, Inaugural Lecture, Delivered 5th March, 1993.

Drones have become some country's global fighting machines.¹⁷ The targeted killing policy which has become the United States principal method of response to terrorism after the 9/11 attack against the country was adopted by President George W. Bush, but has now been executed extensively by the Obama administration. It is reported that as of August 2011, the number of deaths caused by drone air strikes is between 1,100 and 1,800 militants. In addition, many innocent civilians have been killed through drone air strikes.

The morality of the U.S. drone campaign, and its legality under domestic or international law, is the subject of current bitter debate.¹⁸ It has been alleged that the U.S. government's targets using drone attacks have broadened beyond the scope of the 2001 authorization.¹⁹ The danger is that if drone strikes are not internationally regulated, and other States were to claim the same broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos. According to reports in the New York Times and elsewhere, the Obama Administration conducts so-called signature strikes, which are aimed not at specific high-level targets but at any person or people whose behavior conforms to certain suspicious patterns.²⁰

The United States may be the market leader in the use of drone technology, but there are more than 50 States with the technology that can be easily converted into an active drone arsenal.²¹ The international legal question on drone attacks is still unclear. Thus, the United Nations Organization has set up a Panel to investigate the rise in drone strikes.²²

¹⁷ It has been reported that ten years ago the United States Pentagon had about 50 drones in its fleet, currently it has some 7,500. More than a third of the aircraft in the United States Air force's fleet are now unmanned. The U.S. military reported carrying out 477 drone attacks in Afghanistan in the first 11 months of 2012, up from 294 in all of 2011. Since President Obama took office, the U.S. has executed more than 300 covert drone attacks in Pakistan, a country with which United States is not at war. The Pentagon is planning to establish a drone base in northwestern Africa. For a comprehensive discussion of the rise of the drones, See Time Magazine, February 11, 2013.

¹⁸ Id.

¹⁹ The criticism was leveled by Jameel Jaffer, director of the ACLU's Center of Democracy.

²⁰ Time Magazine note 13.

²¹ The spotlight is mainly on the United States, Britain, and Israel.

²² A prominent British Human Rights lawyer, Mr. Ben Emmerson leads the U.N. Panel to conduct a nine-month study on drone strikes. According to him, the panel would look at "drone strikes and other forms of remotely targeted killing," including a wide array of so-called standoff weapons used in modern warfare, like ground-launched missiles and similar weapons fired from manned aircraft.

Even if it is likely that the form of warfare using drones has come to stay, it will be wrong and unacceptable for the international community to allow the world to fall into this precipice without an agreement between States as to the circumstances in which drone strike targeted killings are lawful, and on the safeguards necessary to protect civilians.²³

The use of drone strikes by States has been condemned at the United Nations Human Rights Council in Geneva mainly by a group of nations critical of the American use of drones, led by China, Russia and Pakistan. It has been strongly suggested that “double tap” drone attacks, involving a second missile attack on a target, could be described as war crimes because they have been reported in some instances as having killed mourners at funerals for people killed in the initial strike, or tribal elders meeting at the target sites. Right now the U.S. is the only nation that operates drones on a large scale, but that will change. Estimates have it that there are 76 other countries either developing drones or shopping for them; both Hezbollah and Hamas have flown drones already.²⁴ The use of drone technology which is for now mostly in the military sphere will later enter civilian hands. It will be hard to say what the consequences may be.

Ultimately, it will be in the interest of states and the international community to cooperate in working together toward adopting a multinational treaty on the use of drones as a means of warfare. For the moment, we submit, based on the existing principles of international law, that it is illegal for a State to invade the territory of another State in any form without authorization and with impunity, even by using drone technology. Such acts are in clear violation of the sovereignty of the States so affected. The acts are in effect in a violation of international law.

²³ Ben Emmerson, at a news conference granted to The New York Times, January 24, 2013.

²⁴ Time Magazine op. cit.

3. AFRICOM, Its Meaning, Objective and Role in Africa

One of the most disturbing and questionable governmental moves in contemporary international relations by an advanced country after the end of the cold war, is the United States of America's imperial agenda for Africa through its establishment of US African Command (AFRICOM). Its mission and objectives are suspicious and require some critical examination in the context of international law in regard to its effect on the sovereignty of the countries of the continent. An important linchpin of the British imperial success during its colonial extravaganza in Africa and elsewhere was prefixed on the infamous principle of "indirect rule." As one writer rightly observed, "the huge swaths of that empire were conquered, not by British soldiers, but by soldiers recruited elsewhere in the empire"²⁵ The usual expectation is that the dirty work of imperial control could be conducted without spilling too much of the white man's blood. Could the mission of AFRICOM have been founded on the same British colonial imperial principle? Is a new cold war emerging and principally being waged by two major powers (United States and China) targeted at another political and economic exploitation and domination of the continent?

The idea of AFRICOM was hatched during the George W. Bush Presidency following the aftermath of the terrorist attack on the United States in 2001. But AFRICOM has been expanded during the last four years of President Obama's administration. The situation becomes more interesting when the elaboration of the scheme is being executed by a President of African descent against his own brothers and sisters. In February 2007, the White House announced the formation of the US African Command (AFRICOM), a new unified Pentagon command center in Africa. The new formation was presented as a humanitarian mechanism in the global war on terror. But actually the real objective is the procurement and control of Africa's oil and its global delivery systems.²⁶ The most

²⁵ Dan Glazerbrook, The Imperial agenda of the US's Africa Command marches on, Guradian.co.uk, Thursday 14 June, 2012.

²⁶ The Western and Sub-Saharan Africa have attracted a rapid increase of the presence of US military forces. The area is projected to become as important a source of energy as the Middle East. However,

significant and growing challenge to US dominance in Africa are China's increased trade activity and investments in the continent. Consequently, the political implication of an economically emerging Africa in close alliance with China is resulting in new cold war in which AFRICOM is designed to achieve military dominance over Africa.

While the official explanation of the objectives of AFRICOM is "to contribute to increasing security and stability in Africa-allowing African States and regional organizations to promote democracy, to expand development, to provide for their common defense, and to better serve the people," US officials have been more straightforward in articulating the true aims of the program.²⁷ It would seem that the idea of AFRICOM is that it will not be the US or European forces fighting and dying for western interests in the coming colonial war against Africa, but Africans. The US soldiers employed by AFRICOM are not there to fight, but to direct with the hope that African Union's forces can be subordinated to a chain of command headed by AFRICOM.

The killing and removal of President Gaddafi of Libya from the world scene - an avowed and most dedicated pan-Africanist after Kwame Nkrumah of Ghana, who was the brain and major financier of the formation of African Union, was without the loss of a single US or European soldier.²⁸ Whatever one thought about the man, it is clear that his vision of Africa was genuine and honest and different from the subordinate supplier of cheap labor

challenge to US domination and exploitation is coming from the people of Africa-most especially in Nigeria where seventy percent of Africa's oil is contained. The citizens of the Niger Delta region, the main seat of Nigerian oil deposits have not benefited even though they sit on top of vast natural oil and natural gas deposits. The Nigerian people's movements are demanding self-determination and equitable sharing of oil-receipts. So are environmental and human rights activists that have documented atrocities on the part of multinational oil companies and the military in this region of Nigeria. Resistance of these groups against these activities have become proactive by attacks on pipelines and oil facilities as well as kidnapping of oil personnel which have resulted in drastic curtailment of oil production. Within six months in 2006, there were nineteen attacks on foreign oil operations and over \$2.187 billion lost in oil revenues representing 32% of the country's oil revenue generated that year.

²⁷ Vice Admiral Robert Moeller declared in a conference in 2008 that AFRICOM was about preserving "the free flow of natural resources from Africa to the global market." In 2010, it was published in a Foreign Policy Magazine that AFRICOM's job is to protect American lives and promote American interests. Obviously the aim is to use military power to win back the leverage once attained through financial monopoly.

²⁸ The disturbing increase in the number of dead American and European soldiers in Iraq and Afghanistan have reminded politicians from those countries that colonial wars in which their own soldiers are killed do not win them much popularity at home. Let the British and American soldiers be safely extricated while a proxy force of allies kills the opponents of the new regime on their behalf.

and raw materials that AFRICOM was created to maintain. With AFRICOM waxing stronger and stronger, and its strongest opponent killed, the African Union now faces the biggest choice in history: is it to become a force for true continental integration and independence, or merely a conduit for continued western Euro-American military aggression against the continent for their new bid for economic and military domination of the continent in the twenty first century?

4. The Proliferation and Politics of Permanent and Ad Hoc Tribunals and Surrender of National Jurisdictions to Foreign Judicial Authorities

In an effort to forge proper mechanisms for the settlement of international disputes amicably in international relations, there has been a proliferation of international courts and tribunals. This trend has become greater with a seeming increase in conflicts and hostilities across the world at national, international and transnational levels. In particular, it is important to find the best approach to try war criminals that perpetuate heinous crimes against humanity for the purpose of justice. In order to achieve the main objective, States in certain circumstances must necessarily have to surrender national criminal jurisdictions to foreign judicial authorities.

The politics and patterns of these courts and tribunals differ according to the regions of their locations. The term justice used in this context must be seen in a multiple sense of meanings: as equality in the distribution or application of rights between strong and weak, rich and poor, man and woman, and black and white.

On top of these Courts is the International Court of Justice at The Hague. Under the Court's Statute, it deals with virtually all questions of law and the interpretation of international laws and legal instruments which are submitted to it by States that are parties to the disputes involved. All the International Courts and Tribunals²⁹ without exception are created by political bodies and processes. Political interests of States and international organizations concerned are taken into consideration in the formation and establishment of

²⁹ Examples are the International Criminal Tribunals for the Former Yugoslavia, Iraq, Rwanda, Cambodia, Sierra Leone, and International Criminal Court created by the Rome Statute.

the bodies. The establishment by treaty of the International Criminal Court (ICC) as a permanent court with the authority to prosecute and try war crimes and other such atrocities was probably one of the most significant developments in the field of international criminal law. The Court at its inception was popularly hailed as a very progressive step in the right direction.

However, of special interest in contemporary times would be how to make a plausible explanation as to why it appears that the majority of the international war crimes tribunals, including the ICC, have recorded most, if not all, indictments of war criminals and other alleged offenders only from the least powerful nations of the world, particularly Africans? Gladly, two of the papers, particularly the paper by Mr. Eustace Azubuike, which are slated for presentation at this conference discuss the International Criminal Court as it relates to the prosecution of mainly Africans. The second paper by The Honorable Lady Justice Mary Kasango will discuss Kenya's encounter with the International Criminal Court.

5. State Recognition and Admission to the United Nations: The Palestine Case

The question of recognition in international law is still mired in controversy and uncertainty, and presents an area of complexity in the current international law regime. Notwithstanding the fact that the Montevideo Convention on the Rights and Duties of States has outlined the requirements of Statehood, and perhaps by implication, the conditions for recognition, politics has continued to have a great influence on the recognition in international law. Statehood, recognition, and admission to the United Nations are all interconnected, since it is only an entity that qualifies as a State that can be admitted to the United Nations. In addition to possessing the characteristics of a State, such an entity must be recognized, at least by a great number of other States for it to seek admission to the United Nations. But, it must be recognized that there is constant inter-play of international law, international politics and ideology. The Palestinian case presents a good example of the controversy and politics surrounding matters of Statehood.

The Montevideo Convention outlines the qualifications of statehood to be: 1) permanent population, 2) defined territory, 3) government, and 3) capacity to enter into relations with other states. Traditionally, there are two theories of recognition in international law. According to the first, the Declarative Theory, which states that once a state meets the conditions for statehood, that state should earn recognition from other states. By virtue of this postulate, a state may be in existence irrespective of whether or not other states recognize its existence. This is because recognition is merely declaratory of an already existing statehood. The second theory is the Constitutive Theory, the postulate of which is that an entity acquires statehood when it is recognized by other states. In other words, recognition is indispensable to the acquisition of statehood. An entity is not a state if it is not recognized by other states.

When the Montevideo Convention criteria for statehood are applied to Palestine, it would appear that Palestine meets each of the four conditions. However, arguments have also been proffered to the contrary, that is, that Palestine does not meet the criteria. On the issue of recognition, in November 1988, Palestine declared its independence, and currently, not less than 114 states have recognized the newly proclaimed state of Palestine and its government- the Palestine Liberation Organization (PLO). The United States refused to recognize the declaration of independence by Palestine, and to buttress its position, moved to close down the PLO mission at UN headquarters in New York. The UN has not really helped matters affecting the real status of Palestine. It seems to be taking positions that are anything but consistent. While Palestine has not been officially admitted to the UN in accordance with Article 4 of the UN Charter, the General Assembly has accorded it an Observer status, with many of the benefits accruing to States. Thus, the PLO has participated in deliberations and conferences of the UN.

We have long held the view that the question of the legal status of unrecognized states in international law touches on a wide range of interesting jurisprudential issues

connected with the theory and practice of contemporary international law.³⁰ A State may exist without being recognized, and if it does exist, *in fact*, then, whether or not it has been formally recognized by other states, has a right to be treated by them as a State. The act of recognition expresses the intention, on the part of the recognizing State, to observe in regard to the new state all rights and duties as prescribed by international law.

UNESCO Admits Palestine

In late October 2011, the biennial General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) voted to admit Palestine as a member state of the organization. Under the Article II(2) of the UNESCO Constitution,³¹ “states not members of the United Nations Organization may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference.” The vote in the General Conference was 107 in favor, 14 opposed, with 52 abstentions. Under Article IV(C) 8(a) of UNESCO’s Constitution, abstentions do not count as votes, so the vote satisfied the requirement for admission. The General Conference’s vote triggered an immediate suspension of U.S. payments to UNESCO.³² Under U.S. Public Law 103 – 236, the United States shall not make any voluntary or assessed contribution to any affiliated organization of the UN which grants full membership as a State to any organization or group that does not have the internationally recognized attributes of statehood, during the period in which such membership is effective. However, the correctness of the US position on the statehood status of Palestine in international law becomes doubtful as has been pointed out earlier. Both the Director-General of UNESCO, Irina Bokova, and the Secretary-General of the United Nations Organization, Ban-Ki-moon, expressed concern about the potential challenges that may arise

³⁰ Chris N. Okeke, *infra* note 2. In discussing the personality of unrecognized states in international law, with particular reference to Rhodesia as an illustration at the time, we concluded that so far international law has not settled enough as to define the scope of contacts which states are permitted to engage in their relationships with unrecognized states and governments. It was also our submission, based on extensive research and analysis, that even unrecognized states are states under international law and enjoy some level of international legal personality.

³¹ Available at <http://unesdoc.unesco.org/images/0012/001255/125590e.pdf>.

³² The United States of America pays 22 percent of UNESCO’s budget, which was projected at \$65 million for 2012-2013. Provisions of U.S. Law adopted in the 1990s prohibit paying appropriated funds to the United Nations or any specialized agency that admits Palestine to full membership.

to the universality and financial stability of the Organization. Ban-Ki-moon, in particular, warned of the adverse implications for other UN agencies of losing U.S. financial support should Palestine gain full membership.

6. Brief Comments on Some Selected Burning and Current Issues Challenging International Law and World Peace

Before concluding our report discussing issues and activities that continue to impact international law and its progressive development, we have decided to call attention to some very recent happenings that are of interest to international peace and security. A number of them are positive, while some are negative and worrisome.

Korean Peninsular Crisis

Let us start with the negative side - the ugly development in the Korean Peninsular where North Korea is on the brink of war with South Korea. So far, North Korea has carried out a third nuclear test in defiance of the United Nations warnings. The latest nuclear test led to an imposition of fresh harsh sanctions by the UN. Also, the North Korean move has prompted criticism from an important ally, China. It equally attracted condemnation from some other parts of the world. North Korea has threatened attacks almost daily since it was sanctioned by the UN.

In response to the NK third nuclear test, the US-South Korean military carried out military exercises as well as flying US B-2 bomber sorties over South Korea during military exercises which angered the North Korean Government even further. Already, some major powers, particularly, Russia, United Kingdom and China have been appealing for maximum caution and restraint on all the parties concerned to be measured in their rhetoric and actions.

There is a consensus from a number of outspoken States that there is great need to prevent any conflict in the area. Such countries as the United Kingdom of England and Northern Ireland, Russia and lately China have voiced their caution on the international consequence of any outbreak of war in the region.

While sounding a note of caution is necessary, it is more important to address and tackle the main root causes of the conflicts between the parties involved before things become complicated.

The International Criminal Court (ICC)

Another recent development that has pushed the framework of international criminal law to an appreciable level is the application of the Rome Statute of the International Criminal Court to Illegal Natural Resources Exploitation. Contemporary African conflicts, such as the case of the Democratic Republic of the Congo, have become increasingly distinguishable by the tight connection between war and various forms of illegal natural resource exploitation, particularly targeting valuable mineral resources. Illegally exploited natural resources have become one of the greatest threats to regional peace and human security on the continent of Africa.

One must note the unprecedented recent shift in the conduct of the United Nations Security Council with regard to the resolution of international conflicts. Not long ago, the United Nations Security Council authorized the use of force by its soldiers when it sent an intervention brigade to the Congo with an unprecedented mandate to take military action against rebel groups to help bring peace to the country's conflict –wrecked eastern part of the country. The authorization of the intervention brigade is unprecedented in UN peacekeeping history because of its offensive mandate. The resolution was sponsored by France, the United States and Togo. By that resolution, the brigade was given a mandate to operate “in a robust, highly mobile and versatile manner” to ensure that armed groups cannot seriously threaten government authority or the security of the civilians.

The Arms Trade Treaty

Another encouraging and very positive development in the international system at the moment is the work of the United Nations with regard to the regulation of arms trade. The regulation of arms trade and the reduction in arms sales will certainly ease global

tensions. There has been a landslide vote at the United Nations General Assembly in adopting the important international legal instrument.

ACKNOWLEDGEMENTS AND GRATITUDE

I have the honor to express my gratitude to Dean Rachel Van Cleave for her kind opening statement, Professor Jon Sylvester, Associate Dean for Graduate Law Programs for his thoughtful welcoming remarks and for opening the 23rd Annual Fulbright Symposium. It is with a great feeling of pride and gratitude that I formally welcome into our midst our Special Guest of Honor, Keynote Speaker and good friend, Professor Dr. Michael van Walt van Praag. I offer him special thanks for taking time off from his very busy schedule to speak at our event. I thank him for his very erudite presentation.

The Sompong Sucharitkul Center for Advanced International Legal Studies has kept alive as much as possible, the staging of very successful and high standard Annual Fulbright Symposia for the past twenty three years. We have succeeded in attracting notable world renowned jurists to GGU. Some of them served as keynote speakers, while Fulbright and other local and foreign scholars handled different important international legal topics. For the record, the previous keynote speakers I invited during my tenure so far as the Director of the Center include: His Excellency, former ICJ Judge Abdul G. Koroma (2008), Distinguished Professor Dr. Sompong Sucharitkul (2009), Professor Michael K. Ntuny (2010), Sir Arnold K. Amet (2011), Professor Kofele-Kale (2012) and Professor Michael van Walt van Praag (2013). He has joined this impressive list of international jurists and scholars who have come to share their wealth of international law experiences with us. Each brought the full weight of their great intellectual and judicial aura to Golden Gate University School of Law.

The Chair of the morning session needs no formal introduction. He has been a great pillar and strong supporter of our international programs starting from when he was the Dean of the Law School. I refer to none other than the Golden Gate University School of

Law revered and respected Dean Emeritus and Professor Peter Keane. Professor Keane is an acknowledged national and international commentator on current national and international legal issues. He will be moderating this morning's session where qualified international law scholars and their colleagues on other related fields will present their individual papers. I thank all the presenters very much and hope for a future of continued support for the development of the programs of the Department and the Center.

Golden Gate University School of Law has worked very hard for the past twenty three years in its effort to disseminate the principles of international law among legal scholars of all nationalities. Our main task lies and still remains in the internationalization of the concept of legal education in the United States of America.

Among those who have made great and significant contribution to the success of the work of the Center and growth of our international law programs are: Dr Sophie Clavier, Dr. Art Gemmell, Dr. Remigius Chibueze, Dr. Zakia Afrin, Dr. Hamed Adibnatanzi, and Professor Warren Small. They have devoted their time to upholding the International Rule of Law through their dedicated teaching and guidance of the international law students at GGU. Each of the professors plays a key role every year during this annual Fulbright ritual, serving either as presenters, session moderators, rapporteurs or in some other vital capacity to make the meeting both successful and memorable. This fact is evidenced in this year's program. I thank Professor Zakia Afrin specially for accepting to serve as the Rapporteur for the morning session. I also thank Professor Sophie Clavier for agreeing to handle the afternoon session as the Rapporteur.

The organization of this year's Symposium could not have been possible without the strong support of the administrative staff of the Graduate Law Programs comprised of Margaret Alice Greene, Director of Graduate Law Programs; John Pluebell, Assistant Director, International Student & Scholar Services, Natascha Fastabend, Senior Program Coordinator, Brad Lai, Program Coordinator, as well as Kathryn Kaminski, Office Assistant. Every invited participant must have by now met Mr. Brad Lai in person. He has worked very

tirelessly to ensure that he was in constant touch with all the invited speakers and conference attendees, informing them on the details of our needs to organize the conference.

We also enjoyed the able assistance of a team of many GGU international law students who volunteered to make sure that the conference is successful. They were drawn mainly from the members of the International Law Student Association as well as from our own pool of LL.M. and S.J.D. students. In a special way, I remain heavily indebted to the student editors of the Annual Survey of International and Comparative Law led by Ms. Oraneet Orevi. These students have been of tremendous help to us with the substantial editorial work of the accepted articles for the production of the 19th volume of the Annual Survey of International and Comparative Law Journal which is in the process of production at this point in time.

This Conference is staged by the Sompong Sucharitkul Center for Advanced International Studies and Golden Gate University School of Law. In this endeavor, we enjoyed the cooperation of the ABA Section of International Law and Golden Gate University International Law Student Association, as well as other co-sponsors. We heartily express our debt of gratitude to all of them.

I feel very happy that the culture of integrating theory with practice through the invitation of Consuls General, Consuls and Honorary Consuls of foreign States in California to our annual academic discussions is steadily yielding a bounty harvest. In our midst today we have such eight distinguished personalities, namely: The Honorable Ambassador & General Consul General of the Republic of Kenya to California, Dr. Wenwa Akinyi Odinga Oranga, accompanied by the Honorable Deputy Consul of Kenya, Mr. Kevin Muiruri; The Honorable Consul General of the Republic of Indonesia, Sinambela Asianto; The Honorary Consul General of Namibia, Pastor Moises Guerrero; The Honorable Deputy Consul General of the Philippines, Jamie Ramon Ascalon; The Honorable Consul General Ambassador of Greece, Ioannia Andreas; The Honorable Deputy Consul General of Germany, Bernhard Abels; The Honorable Consul General of Chile, Ortega Klose Rolando.

Golden Gate University gratefully appreciates your presence and the invaluable input you make to our discussions at these intellectual conferences, particularly as they officially have to deal with the practical implementation of some of the many international law principles and norms in the execution of your daily duties.

CLOSING OBSERVATIONS

We have come, as it seems, full circle. I have deliberately generated many controversial but important issues of international law relevance in this report. The intention is to provoke healthy discussions on the reinterpretation of international law in a multipolar world. Where is international law headed in the future? Regrettably, I cannot confirm or give any definitive answer one way or another with some degree of certainty.

However, I feel convinced that new international law derives its sources from areas other than the traditional sources. I strongly believe that new international law raises new subjects other than States to the legal system- a view that I have consistently held for about thirty-eight years, when the topic formed the central theme of my doctoral dissertation. I see an international lawyer as a conscious social actor. His task just like that of every lawyer is to contribute to reaching acceptable solutions to social problems. A lawyer is essentially a social engineer, a mediator between disputing parties and a manager of disagreements.

I continue to hold the opinion that the prospects for the progressive development of international law in the world lie in those who teach, adjudicate, execute, research, and publish in the area. They play a very critical and useful role. There is still much reliance by many jurists on academics and commentators who greatly influence the development of international law. So too, do those who serve in a representative capacity of their countries as ambassadors and consular officers influence the development of international law.

The forces which shape international law, like the forces which shape international relations, are many and complex. In spite of the criticisms of the possibility of law, there is no alternative to despair. An attitude of nonchalance and disobedience for international law apparent from the conduct and statements of some States will not terminate international

law from being in existence. The economies, societies and cultures of different nations of the world have become increasingly interconnected. These must as of necessity be regulated and serviced by international law.

All national and international law societies should re-double their efforts in promoting the study and dissemination of principles of international law. In a like manner, I strongly urge all regional international law associations or groups to double their efforts in promoting the study and progressive development of the law of contemporary international law as it affects the world's huge population, enormous resources and resulting ethnic warfare and slaughter.

When I was considering which topics and speakers to accept for this symposium, it occurred to me to think of the interconnectedness of each subject matter with any other(s), bearing in mind that even where two topics seem to be similar, the presenters are likely to offer different approaches and emphasis, thereby giving room for a healthy exchange of ideas among the assemblage of fine minds.

I hope that the convergence of different topics in the program which boarder on human rights and humanitarian law, criminal law, as well as hard core international law doctrines and principles will cross-pollinate each other in such a way that we come out of this symposium richer and wiser in understanding different aspects of the international legal system and its direction in a multipolar world.

Sovereignty is an important status by which a State vindicates its existence as a member of the international system. To date, no better legal doctrine has emerged to take its place. In the contemporary setting of international relations, the only way most States can realize and assert their sovereignty is through active participation in the various regimes and bodies that regulate and order the international system. Ultimately, connection to the rest of the world and the political ability to be an effective actor within it are more important than any tangible benefits arising from compliance with international law. The right time has come for all States of the world to take seriously the building of a more modern, strong and

sustainable international legal framework which they must respect as a matter of legal obligation and on the basis of the universal principle of sovereign equality of States, if international law is to be saved from imminent death.

C. Nwachukwu OKEKE

San Francisco, April 12, 2013.